IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

CRL.A.No. 1534 of 2005(C)

SC.5/2005 OF SPECIAL JUDGE (N.D.P.S. ACT CASES), VADAKARA

.....

APPELLANT4TH ACCUSED:

SHIJIN JACOB, AGED 31 YEARS,
S/O.CHACKO, RESIDING AT NJONDAMMAKKAL,
THRISSALARI PO, MANANTHAVADY,
WAYANAD DISTRICT.

BY ADVS. SRI.S.M.PRASANTH
SRI.P.K.JOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.14450 OF 2005 IN CRL.APPEAL NO.1534 OF 2005.

DISMISSED

20.12.2006 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO.1534 OF 2005

Dated this the 20th day of December, 2006

JUDGMENT

The appellant is the 4th accused in Sessions Case No.5 of 2005 on the file of the Special Judge (N.D.P.S. Act Cases, Vadakara). The appellant and three others who are accused Nos.1 to 3 faced trial for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the N.D.P.S. Act").

2. The prosecution case against the appellant and the other accused was that on 27.5.2004 at about 11.40 P.M when PW.2, the Sub Inspector of Police, Thamarassery, on getting information regarding transportation of ganja, inspected the ambassador car bearing No.KLD 5317, at the side of the public road, he found the accused in possession of 2.600 Kgs. of ganja. Accused Nos. 1 to 3 were arrested on the spot, and the 4th accused - the appellant herein who escaped was arrested on 1.6.2004 at about 4 P.M. It is the further case of the prosecution that at the time of arrest of accused Nos.1 to 3, 1.100 Kgs. of ganja was seized from the car as per Ext.P1 seizure mahazar and the remaining 1.500 Kgs. of ganja was seized from

the 4th accused as per Ext.P9 seizure mahazar. To prove the case against the appellant and the other accused, the prosecution examined PWs.1 to 8 and produced Exts.P1 to P18 and MOs.1 to 6. After closing the prosecution evidence, the appellant and the other accused were questioned under Section 313 Cr.P.C.. All the accused denied the allegation levelled against them. Apart from denying the prosecution allegation, the appellant also stated that on 31.5.1004 while he was in his house, the police came and took him into custody and thereafter he was brought to the police station and kept there upto 12 O' Clock and got some papers signed by him. After considering the entire prosecution evidence, the trial court found the third accused and the appellant guilty under Section 20(b)(ii)(B) of the N.D.P.S. Act, convicted them thereunder and sentenced them to undergo rigorous imprisonment for three years each and to pay a fine of Rs.5000/- each and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months. Accused Nos.1 and 2 were found not guilty and were acquitted. The appellant has filed this appeal challenging the above conviction and sentence ordered against him.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant contends that the trial court went wrong in placing reliance on the evidence of PWs.1 to 4 to find that the appellant was in possession of 1.500 Kgs. of ganja on 1.6.2004 and that the ganja was brought in the ambassador car bearing No. KRD 5317 on 27.5.2004. Counsel also submits that the trial court committed serious error in accepting the evidence of PW.4 who was a chance and tutored witness. The prosecution tried to establish the charge against the appellant and the other accused on the basis of the evidence of PWs.1 to 4.

5. PW.1 is the independent witness who was examined to prove the seizure of ganja as per Ext.P1 seizure mahazar. He gave evidence before the court below that on 27.5.2004 while he was coming along the road, two persons in an ambassador car were seen restrained by the public and he identified them as accused Nos.3 and 4. He also stated that the police came and after questioning the passengers in the car seized MO.3 sack from the back seat of the car. PW.1 further stated that PW.2, the Sub Inspector of Police weighed the same and it was found that the sack contained 1.100 Kgs. of ganja. He further stated that accused No.3 was arrested by the police and that the appellant escaped. This witness also

stated that accused No.3 was taken to the police station and on the way to the police station, accused Nos. 1 and 2 were seen standing at the bus stop and that they were also arrested by PW.2. When PW.1 was questioned by the counsel appearing for accused No.3, he stated that he was not sure whether accused No.3 was inside the car or standing outside the car.

6. PW.2 was the Sub Inspector of Police who seized 1.100 Kgs. of ganja from the car on preparing Ext.P1 seizure mahazar. He deposed before the court below that he got information that some persons travelling in an ambassador car were restrained by the public at Kaithapoyil suspecting that ganja was being transported in the said car. He further stated that when he reached the spot, he saw accused No.3 sitting inside the car and that though a search was conducted as per the provisions of the N.D.P.S. Act, nothing was recovered from his body. But at the same time MO.3 sack was seen placed at the back seat of the car. PW.3 stated that he seized MO.3 and on examining the same it was found that the sack contained ganja weighing 1.100 Kgs. This witness further stated that he took two samples of 25 grams each in two packets and sent the samples for chemical analysis. He arrested accused No.3 and on the way to the police station he saw accused Nos.1 and 2 standing at the bus stop and arrested them. He further deposed that accused Nos.1 to 3 were taken to the police

station and a crime was registered against them. He also stated that accused Nos.1 to 3 informed him that accused No.4 who was also travelling in the car had escaped and that on investigation it was understood that accused No.4 left the car with certain quantity of ganja.

7. PW.3 was the police constable who had accompanied PW.2 on the day of the incident. He gave evidence to the effect that when they reached the spot, he saw accused Nos. 1 to 3. He stated that he even saw accused No.4 who left the car when they reached the scene of occurrence. In all other particulars, PW.2 supported the version given by PW.2. PW.7, the Circle Inspector of Police conducted further investigation of the case. He deposed before the court below that while conducting investigation he got information on 1.6.2004 that accused No.4- the appellant was waiting at the bus stop with a bag. He stated that he reached the spot and questioned the appellant regarding the bag in his hand. PW.7 further deposed that though the appellant informed him that the bag contained his dress, on examining the bag, it was found that the bag contained a packet of ganja weighing 1.500 Kgs. This witness further stated that he seized the packet in the presence of PW.4 and other independent witnesses, took samples, sent the samples for chemical analysis and arrested the appellant on preparing Ext.P16 arrest memo.

8. PW.4 was examined to prove that the appellant was seen at the bus stop on 1.6.2004 with MO.4 bag in his hand This witness stated that while he was waiting at the bus stop with his friend , PW.7 came there in a jeep and asked the appellant regarding the contents of the bag. PW.4 also stated that PW.7 examined MO.4 bag and found a packet containing ganja. This witness further stated that PW.7 seized MO.4 as per Ext.P9 mahazar and after weighing the ganja, PW.7 took two samples in two separate packets and sealed the same. PW.5 was examined to prove the scene mahazar prepared by PW.7. He deposed that PW.7 came to his house and prepared the mahazar and that he had put his signature in the mahazar. PW.6 was the Village Officer who prepared Ext.P12 site plan. PW.8 was the Circle Inspector of Police who proved Exts.P17 and P18 chemical analysis reports and filed the final charge.

9. The question to be considered in this appeal is whether the prosecution has succeeded in proving the case against the appellant. While considering this point, the evidence of PWs.1 to 4 are very relevant. PW.1 when cross-examined stated that he had not identified the appellant as the person leaving from the scene of occurrence. He stated that he saw accused No.3 and saw a person leaving the place. He also stated in cross-

examination that he did not see anybody coming in the car and that nobody had restrained accused Nos.1 and 2. He further stated that the police reached the spot about 45 minutes after accused Nos.1 and 2 left the place. PWs.2 and 3 also stated that when they reached the scene of occurrence, they saw accused Nos. 1 to 3. PW.3 had a definite case that when he reached the spot, the appellant was sitting in the car. Considering the fact that different versions are given by PWs.1 to 3, this Court is not in a position to accept their evidence to hold that the appellant was a passenger in the car and that he left the scene of occurrence with certain quantity of ganja. Further, PW.4 was the only independent witness examined to prove that PW.7 found the appellant at the bus stop with MO.4 bag which contained 1.500 Kgs. of ganja. PW.4 had stated that he was residing about 11 Kms. away from the bus stop and he was waiting at the bus stop with his friend. No explanation is seen offered by PW.4 for his presence at the bus stop during the relevant time. He also stated that there were other witnesses at the spot when the appellant was arrested by PW.7. Hence, the evidence of PW.4 is doubtful as he is only a chance witness. Further, the prosecution case against the appellant was that he had travelled in the car along with accused Nos. 1 to 3 on 27.5.2004 at about 10.30 P.M. and that when the car was stopped by the public, he left the car with certain quantity of ganja. It is the further case of the prosecution that the

appellant was arrested after four days with the same bag containing the ganja and that the appellant was wearing the same cloths which he was seen wearing on 27.5.2004. There is also no independent evidence to prove that the appellant had left the car with MO.4 bag. PW.1 had only stated that he had seen somebody leaving the car and he had not identified the appellant as the person who had left the car with MO.4 bag. It appears that the trial court had not taken into account the contradictory nature of the evidence of these witnesses.

10. On an overall appreciation of the prosecution evidence, this Court is of the view that the prosecution failed to prove the case against the appellant beyond reasonable doubt. Hence, the benefit of doubt has to be given to the appellant. Accordingly, the conviction and sentence ordered against the appellant - 4th accused in Sessions Case No. 5 of 2005 on the file of the Special Judge (N.D.P.S. Act Cases), Vadakara are set aside and the appellant is acquitted. The appellant shall be released forthwith, if he is not wanted in connection with any other case.

The Crl. Appeal is allowed as above.

(K.THANKAPPAN, JUDGE)

sp/